(B) The Trust Company delivered to Eastman, Dillon & Company certificates for half the new stock—$12,500,000. To the owners of the old stock—to each his pro rata part—it delivered certificates representing the remaining half, together with the $7,500,000 cash received from Eastman, Dillon & Company. The owner of each $100 of old stock thus received $150 cash, also $250 of new stock representing an interest in the property and business half as large as he had before. Prior to the specified transactions his interest in the enterprise was 100/5,000,000; thereafter it became 250/25,000,000, or 50/5,000,000.

The Collector ruled that each old stockholder sold his entire holding, and assessed respondent accordingly for resulting profits. Adopting a different view, the courts below held that he really sold half for cash and exchanged the remainder, without gain, for the same proportionate interest in the transferred corporate assets and business.

We agree with the conclusion reached below. The practical result of the things done was, a transfer of the old assets and business, without increase or diminution or material change of general purpose, to the new corporation; a disposal for cash by each stockholder of half his interest therein; and an exchange of the remainder for new stock representing the same proportionate interest in the enterprise. Without doubt every stockholder became liable for the tax upon any profits which he actually realized by receiving the cash payment. If by selling the remainder he hereafter receives a segregated profit, that also will be subject to taxation.

Petitioner relies upon *United States* v. *Phellis*, 257 U. S. 156, and *Rockefeller* v. *United States*, *id.* 176; also *Cullinan* v. *Walker*, 262 U. S. 134, which followed them. As the result of transactions disclosed in the *Phellis* and *Rockefeller Cases*, certain corporate assets not exceeding accumulated surplus were segregated and passed to individual stockholders. The value of the segregated thing

so received was held to constitute taxable income. Cullinan's gain resulted from a dividend in liquidation actually distributed in the stock of a holding company incorporated under the laws of a foreign State, not organized for the purpose of carrying on the old business, and which held no title to the original assets.

Eisner v. *Macomber,* 252 U. S. 189, gave great consideration to the nature of income and stock dividends. It pointed out that, within the meaning of the Sixteenth Amendment, income from capital is gain severed therefrom and received by the taxpayer for his separate use; that the interest of the stockholder is a capital one and stock certificates but evidence of it; that for purposes of taxation where a stock dividend is declared, the essential and controlling fact is that the recipient receives nothing out of the company's assets for his separate use and benefit. The conclusion was that, " having regard to the very truth of the matter, to substance and not to form, he has received nothing that answers the definition of income within the meaning of the Sixteenth Amendment."

Applying the general principles of *Eisner* v. *Macomber,* it seems clear that if the National Acme Manufacturing Company had increased its capital stock to $25,000,000 and then declared a stock dividend of four hundred per cent., the stockholders would have received no gain—their proportionate interest would have remained the same as before. If upon the transfer of its entire property and business for the purpose of reorganization and future conduct the old corporation had actually received the entire issue of new stock and had then distributed this pro rata among its stockholders, their ultimate rights in the enterprise would have continued substantially as before—the capital assets would have remained unimpaired and nothing would have gone therefrom to any stockholder for his separate benefit. The value of his holdings would not have changed, and he would have retained the same essential rights in respect of the assets.

We can not conclude that mere change for purposes of reorganization in the technical ownership of an enterprise, under circumstances like those here disclosed, followed by issuance of new certificates, constitutes gain separated from the original capital interest. Something more is necessary—something which gives the stockholder a thing really different from what he theretofore had. *Towne* v. *Eisner*, 245 U. S. 418; *Southern Pacific Co.* v. *Lowe*, 247 U. S. 330; *Gulf Oil Corporation* v. *Lewellyn*, 248 U. S. 71. The sale of part of the new stock and distribution of the proceeds did not affect the nature of the unsold portion; when distributed this did not in truth represent any gain.

Considering the entire arrangement we think it amounted to a financial reorganization under which each old stockholder retained half of his interest and disposed of the remainder. Questions of taxation must be determined by viewing what was actually done, rather than the declared purpose of the participants; and when applying the provisions of the Sixteenth Amendment and income laws enacted thereunder we must regard matters of substance and not mere form.

Affirmed.

MR. JUSTICE HOLMES and MR. JUSTICE BRANDEIS dissent on the ground that the case falls within the rule declared in *Cullinan* v. *Walker*, 262 U. S. 134.